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IN THE

SUPREME COURT OF THE UNITED STATES

CLARENCE J. THOMPSON

Petitioner

vs.

THE STATE OF GEORGIA

Respondent

To The Honorable Chief Justice and Associate Justices
Of The Supreme Court Of The United States

May it please the Court:

Clarence J. Thompson files this his petition for writ of Certiorari to issue to the Court of Appeals of the State of Georgia to review here the record and judgment entered by that court on September 10, 1945. R 21)

The petition of Clarence J. Thompson to the Supreme Court of Georgia for writ of certiorari to the Court of Appeals of Georgia was denied on January 16, 1946 (R 38) and the motion of Clarence J. Thompson to the Supreme Court of Georgia to reconsider the action in

denying the petition of Clarence J. Thompson for certiorari was denied on February 21, 1946. (R-38)

The Court of Appeals of Georgia is therefore the highest court of the State of Georgia in which a decision in this case could be had.

Opinion Below

The opinion of the Court of Appeals of the State of Georgia was entered on September 10, 1945 (R 21) Thompson Vs. The State—35 S. E. 306.

Jurisdiction

The jurisdiction of this Court is invoked under Section 237 (b) of the judicial Code as amended. 28 U. S. C. A. Section 344 b the highest Court of the State of Georgia having denied to petitioner a title right, privilege and immunity specially set up and claimed by him under the Constitution of the United States.

Federal Questions Raised

BY MOTION TO SET ASIDE AND VACATE AN EXPARTE ORDER OF HIS HONOR EDGAR E. POMEROY, JUDGE OF THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA, — ATLANTA CIRCUIT, FOREVER BARRING THE RIGHT TO PRACTICE LAW IN THE COURTS OF THE STATE OF GEORGIA.

An ex parte order was passed by his Honor, Edgar E. Pomeroy, judge of the superior court of Fulton County, Georgia, — Atlanta Circuit, forever disbarring Clarence

J. Thompson from the right to practice law in the Courts of Georgia. (R-10)

The judgment of disbarrment was predicated upon the alleged knowledge by a judgment of the Court of Appeals of Georgia in the case of Thompson Vs. The State, reported in 67 Georgia Appeals Reports, Page 240, affirming the judgment of the lower court finding Thompson guilty of an offense involving moral turpitude.

Thompson filed his motion under oath (R 10) Contending:

That the judgment of disbarrment was entered without due process of law and was entered at a time at which Thompson was a non resident of the State of Georgia and claiming that the judgment of the Court of Appeals of Georgia was a nullity in that a PRIOR JUDGMENT of the Court of Appeals of Georgia in the same case and between the SAME PARTIES had rendered a judgment quashing the indictment against Thompson and that by the second judgment of the Court of Appeals of Georgia, Thompson was put in jeopardy a second time for the SAME OFFENSE, in violation of the provision of Amendment Eight, — Article Five of the Constitution of the United States and claiming that for the reasons set forth, Thompson had never been legally convicted of a crime involving moral turpitude.

The State, through its Solicitor General, filed a general demurrer to the motion of Thompson to vacate the order of disbarrment (R 19). The demurrer was sustained and the motion to vacate the judgment of disbarrment was dismissed. (R 7)

On Bill of Exceptions to the Court of Appeals of Georgia (R 1) assigning error upon this ruling the judgment of the lower court, was affirmed. (R 26)

In denying the federal rights asserted by Thompson in his motion to vacate the order of disbarrment,

The Court of Appeals of Georgia (R 21) said:

"The defendant cannot here contend that he was never convicted of a crime involving moral turpitude.

This question has been decided adversely to him. Contending in the decision that Thompson was precluded by the decision of the Court of Appeals as entered in the same case which decision is now under direct attack. (R 21)

Motion for rehearing was filed (R 36) and was denied by the Court of Appeals of Georgia. (R 36)

Application for writ of Certiorari was made to the Supreme Court of Georgia and the writ was denied January 16, 1946. (R 76)

A timely applicatiion was made asking the Supreme Court of Georgia to reconsider the denial of the writ of certiorari and was denied by a divided bench on February 21, 1946. (R 38)

All possibilities afforded by state procedure for a review of the judgment of the Court of Appeals by all state tribunals have been exhausted.

Questions Presented

1. Whether a Court of last resort — In a criminal case, upon entering final judgment quashing an indict-

ment against an accused can entertain a motion for rehearing at the instance of the State and thereafter render another decision in the same case reversing its former judgment and enter a judgment affirming a verdict of guilty in the same court.

2. Whether in such a case, the first judgment as rendered by the court of last resort reversing the judgment of the lower court because the lower court erred in not quashing the indictment amounted to an acquittal and whether upon entering such judgment, the court lost jurisdiction of the person and subject matter.

3. Whether or not a presiding judge can take judicial cognizance of a judgment in a criminal case, rendered by a court of last resort upon a motion for rehearing at the instance of the State, reversing a former judgment in the same case finding the accused not guilty.

4. Whether or not an attorney at law — who has been disbarred upon the ground that he had been convicted of an offense involving moral turpitude — can move to vacate the order of disbarrment upon the ground that the judgment of conviction was void.

5. Whether or not an attorney at law — who is a non resident of a state in which he formerly practiced law can by an ex parte order by a presiding judge of the court of his former residence be disbarred from the right to practice law in the courts of his former residence at a time at which the attorney was not within the jurisdiction of the court.

6. Whether or not a denial of due process of law and the equal protection of the law by the Appellate Court,

in passing upon assignments of error, in a bill of exceptions, challenging the legality of the judgment, may be plead as a ground to vacate the judgment of disbarrment of an attorney from the right to practice law in the courts of the state asserting jurisdiction.

Specifications of Error to be Assigned

The Court of Appeals of Georgia erred:

1. In holding that the judgment of that court which reversed its former judgment by acquittal — in the case of Thompson Vs. The State — 67 Ga. Appeals — page 240 conclusive as against Thompson, as to whether Thompson was denied equal protection of the laws in violation of the Eighth Amendment and the Fourteenth Amendment of the Federal Constitution.

2. In holding that a denial of due process of law and a denial of equal protection of the laws by the Court of Appeals — in passing upon the assignments of error in a bill of exceptions — may not be plead as a defense in a proceeding to enforce such judgment.

Summary Statement of the Matter Involved

On the eleventh day of March 1944, his Honor, Edgar E. Pomeroy, one of the judges of the superior court of Fulton County, Georgia, Atlanta Circuit of and upon his own motion, entered a decree and final judgment forever disbarring Clarence J. Thompson from the right to practice law in the Courts of Georgia.

Basing the judgment of disbarrment upon the alleged knowledge of the court that Clarence J. Thompson had been convicted of an offense involving moral turpitude,

citing the case of Thompson Vs. The State reported in 67th Georgia Appeals Reports — Page 240.

Thereafter and during the same term of the court at which the order of disbarrment was entered;

Thompson filed a motion to vacate the order of disbarrment, alleging that at the time at which the order of disbarment was signed, without due process of law and without notice to him and at the time at which the judgment was entered that the court was without jurisdictional authority to disbar Thompson, alleging that at the date of the judgment, he was not a resident of the State of Georgia, but was a resident of the State of Michigan. (R 12)

Thompson also alleged that he had never been by any valid verdict or judgment, convicted of an offense involving moral turpitude — alleging that an indictment had been returned against him and that to this indictment, Thompson, before being arraigned, filed general and special demurrers, contending that the allegations in the indictment were insufficient in law to charge an offense. This demurrer was overruled and Thompson excepted pendente lite and thereafter filed a plea of not guilty. (R 13)

It was alleged that Thompson was found guilty. That a motion for new trial was denied. That Thompson assigned error on exceptions pendente lite and the case was appealed to The Court of Appeals of Georgia.

That the Court of Appeals, upon review, on January 16, 1942, entered judgment in language as follows:

"This case comes before the Court upon a writ of

error from the Superior Court of Fulton County, Georgia, and after argument had, it is considered and adjudged that the judgment of the Court below be reversed because the court erred in not quashing the indictment.

Signed Broyles and Gardner J. J. concur

McIntyre dissented." (R 14)

It was alleged that thereafter the State of Georgia, by and through the Solicitor General, was allowed by the Court of Appeals of Georgia the right of appeal from this judgment, entertaining a motion for rehearing and thereafter the Court of Appeals of Georgia entered another judgment reversing its former judgment of acquittal and entered judgment approving the judgment of guilty. (R 14)

Movant alleged and contended in his motion to vacate the the only valid judgment that had ever been rendered was the judgment of the Court of Appeals quashing the indictment and that this was a final judgment from which the State had no right of appeal and it was alleged that the action of the Court of Appeals in attempting to vacate its judgment of acquittal by a second judgment was without jurisdictional power in that entertaining a motion for rehearing to vacate its former ruling had the legal effect of placing Thompson in jeopardy a second time for the same offense.

In violation of Section one, Paragraph Eight of the Constitution of the State of Georgia, which provides:

"No person shall be put in jeopardy of life or liberty more than once for the same offense."

It was alleged that thereafter the Court of Appeals of Georgia upon entertaining the motion for rehearing, on behalf of the State entered judgment as follows:

"C. J. THOMPSON

Vs.

THE STATE

This case came before this court upon a writ of error from the superior court of Fulton County, Georgia and after argument had it is considered and adjudged that the judgment of the lower court be affirmed.

Signed Broyles and McIntyre concur

Gardner J. Dissents

It was contended in the motion to vacate the judgment of disbarrment that this second judgment of the Court of Appeals of Georgia was without jurisdictional power and that because of the facts as alleged that by the second judgment Thompson was placed in jeopardy a second time for the same offense, in violation not only of the Constitution of the State of Georgia, but also in violation of Amendment Eight of the Constitution of the United States, which provides:

"That no person shall be subject for the same offense to be twice placed in jeopardy for the same offense."

Thompson in his motion to vacate the order of disbarrment:

That the second judgment as rendered in the case of

Thompson Vs. The State — 67th. Ga. Appeals 240 was made the judgment of the Superior Court on the 7th day of Dec., 1942 (R. 14)—and that a bench warrant was directed to be served upon petitioner — and that the bench warrant was never served. (R 14)

That thereafter, to-wit, on Jan., 1944, the alleged judgment as entered in the Superior Court of Fulton County, Georgia, was vacated. (R 15)

Movant contended in his motion to vacate the order of disbarrment that he had never been legally convicted of a crime involving moral turpitude — and contended further that the only valid judgment that had ever been rendered against him, was the judgment rendered by the Court of Appeals of Georgia as of date January 16, 1942. (R 14-15)

Movant contended that the second judgment of the Court of Appeals reversing itself and affirming the judgment of the court, finding Thompson guilty, was void and prayed that the judgment of the Superior Court of Fulton County making this second judgment the judgment of the Superior Court was void and should be set aside. (R 18) and also prayed that the judgment of the court disbarring movant from the right to practice law in the State of Georgia be vacated, set aside and revoked. (R 18)

The State, by and through its Solicitor General, filed a geenral demurrer to the motion of Thompson to vacate the order of disbarrment. (R 19)

The demurrer as filed by the State to the motion to vacate the judgment of disbarrment was sustained and

the motion to vacate the order of disbarrment was dismissed on Dec. 20, 1944 (R 7)

Thompson carried the case to the Court of Appeals of Georgia by Bill of Exceptions, assigning error upon the rulings of the trial Court (R 1)

The Court of Appeals affirmed the judgment of the trial court upon the ground that its former decision — Thompson Vs. The State was res adjudicata and was binding against Thompson on all issues as raised in Thompson's motion to vacate the judgment of disbarrment — Opinion of September 10, 1945 (R 21, 29)

Thompson filed his motion for rehearing, which was denied (R 36)

Thompson filed his application for writ of certiorari in the Supreme Court of Georgia, which was denied R 38 — By a divided Bench.

Thompson made application to the Supreme Court of Georgia to reconsider its action in denying writ of certiorari and this application was denied on Feb. 21, 1946.

Reasons for Granting the Writ

The decision of the Court of Appeals of Georgia in this case has decided Federal questions of substance which has not heretofore been determined by this court and has decided them in a way probably not in accord with applicable decisions of this court. The decision of the Court of Appeals of Georgia should be reversed by this Court, because:

I.

The decision of the Court of Appeals of Georgia, disposing of the Federal questions raised by petitioner in his motion as amended to vacate and set aside a judgment of the Superior Court of Fulton County forever disbarring petitioner from the right to practice law — by adhering to and following the decision on a former appeal, as the law of the case and as binding on petitioner on issues as raised — deprives petitioner of the right to defend himself against the attempt of the State to deprive petitioner from exercising a privilege in the pursuit of happiness guaranteed to him under the Bill of Rights and denied petitioner equal protection of the laws and due process of law in violation of the Fourteenth Amendment of the Federal Constitution and such decision cannot be regarded as resting on the independent non-Federal ground of res adjudicata.

Because the decision of the Court of Appeals of Georgia is in direct conflict with the decisions of the Supreme Court of Georgia, in violation of Article VI, Section II Paragraph IX which provides that: "The decisions of the Supreme Court shall bind the Court of Appeals as precedents."

Because the decision of the Court of Appeals is in direct conflict with the decisions of the Supreme Court of the United States.

Because the decision of the Court of Appeals denied the petitioner the Constitutional right to plead "Former Jeopardy as against the right of the State to enforce a judgment infringing upon a liberty and privilege guar-

anteed — to ply one's own trade or profession in the pursuit of happiness.

The decision of the Court of Appeals of Georgia affirmed the judgment of the lower court sustaining demurrer of the State to the motion to vacate the order of disbarrment.

It is elementary that on demurrer the allegations in the pleadings as demurred to are taken as true. Therefore, it is admitted by the State in the case being considered.

1st. That Thompson was not a resident of the State of Georgia at the time at which the order of disbarrment was entered.

2nd. It was admitted that he was not a practicing attorney at law in Georgia at the time at which the order of disbarrment was entered.

3rd. It was admitted that Thompson had no notice of the attempt to disbar.

4th. It was admitted that Thompson had been acquitted of the offense of which he was charged by the court of last resort in Georgia, by the first judgment as rendered by the Court of Appeals of Georgia as copied in the amended motion to vacate the order of disbarrment — (R 14)

5th. It was admitted that the only judgment of conviction that the lower court could have had judicial knowledge at the time at which the order of disbarrment was entered, had the legal effect of acquittal and that as

a matter of law — on demurrer — Thompson had not been convicted of an offense involving moral turpitude as set forth in the order of disbarrment.

Supporting Brief

THE COURT OF APPEALS OF GEORGIA IS WITHOUT JURISDICTION TO RENDER A JUDGMENT WHEREIN IT DECIDES A QUESTION OF LAW CONTRARY TO a prevailing decision of the Supreme Court of Georgia:

"The equal protection of laws is a pledge of the protection of equal laws:

State of Missouri Ex rel.

Gaines Vs. Canada et al.

305 U. S. — 337 — (7)

"Equal protection of the laws is something more than an abstract right. It is a command which the State must respect — the benefit of which every person may demand.

Hill Vs. The State of Texas

316 U. S. 400

The people of Georgia in their Constitution — Article 6 — Section 2 — Paragraph 9 have ordained:

"The decisions of the Supreme Court shall bind the Court of Appeals as precedents."

This Constitutional doctrine is a command to the Court of Appeals of Georgia that when a point of law has been

settled by a decision of the Supreme Court in manner provided by law, it forms a precedent which is not afterwards to be departed from by the Court of Appeals of Georgia, unless it is changed by the Supreme Court in a manner provided by law.

In the case of *The State of Georgia Vs. William Jones*, 7th Ga., Page 422, it is held:

"That a writ of error does not lie to this court in a criminal case at the instance of the State. On page 424 of this decision of this report, it excludes a rehearing after acquittal, upon errors of law and therefore it would seem denies also a rehearing upon judgments of the Court upon questions of law when the jury has not passed upon the guilt or innocence of the prisoner.

This decision rendered in 1849 has been uniformly followed by the Supreme Court of Georgia and became a fixed principle of law and was binding upon the Court of Appeals of Georgia as a precedent. This decision is not only at variance with established rules of law as fixed by the Supreme Court of Georgia, but is at variance with and in conflict with the established rules of law as fixed by the decisions of the Supreme Court of the United States.

The Court of Appeals always applied the foregoing rules of law in similar cases prior to the decisions in the case of *Thompson Vs. The State of Georgia* in the 67th Ga. Appeals Page 240 and as adhered to in the decision now under review.

Only in the case of Thompson Vs. State supra, did the Court of Appeals of Georgia adopt an arbitrary rule different from the foregoing rule of law.

II.

DECISIONS ON FORMER APPEAL NOT RES ADJUDICATA OF QUESTION, whether by said decisions Thompson, petitioner, was denied due process of law and equal protection of the law.

In the first division, of its opinion, the Court of Appeals holds that its opinion and judgment on the former appeal of the case of Thompson Vs. The State, 67th. Ga. Appeals — 240, finding petitioner guilty was binding on petitioner and precluded petitioner from saying that he was not guilty — when he was sought to be disbarred.

The judgment of the Court of Appeals finding petitioner guilty, was never attempted to be enforced until petitioner was sought to be disbarred and when this judgment was attempted to be enforced, petitioner made his attack and alleged that this judgment was void in that the Court of Appeals of Georgia was without jurisdiction of the person of petitioner on the grounds that petitioner by a former judgment of the same court and the same case had been acquitted.

Judgment of courts are not immune from disease or infirmity. They are only prima facie valid, but when a judgment is void for any reason, it can be attacked whenever and wherever it collides with a vested right.

We think that the facts recited in the opinion of the Court of Appeals now under review, supports the theory of petitioner, that he had never been legally convicted of the offense of which he was charged.

The opinion under review declares that petitioner was

acquitted by the first judgment of the Court of Appeals (R 22).

If petitioner was ever acquitted, he could not thereafter be tried for the same offense and held guilty. If innocent, petitioner had the legal and moral right to say so and this right was denied petitioner when the Court of Appeals of Georgia affirmed the lower court in sustaining the demurrer of the State and dismissed petitioner's motion to vacate the judgment of disbarrment.

III.

In the third division of the opinion of the Court of Appeals, it is held that an attorney who was a non resident, after having been convicted of a crime involving moral turpitude while a resident of the State having jurisdiction, may be disbarred by a judge of the superior court of such State without any other or further notice of process or service.

In the case at bar, petitioner at the time at which the order of disbarrment was entered, was not a resident of the State of Georgia.

He was not served with any notice of any effort being made to disbarr him. The judgment of disbarrment was issued ex parte without process.

We submit that process is a necessary ingredient to validate all judgments or decrees affecting the rights of persons and a judgment without process is void.

Jurisdiction of person is likewise essential as a condition precedent to the issuance by any court of a decree affecting person or property rights of the citizen.

It therefore necessarily follows that petitioner was not within the jurisdiction of the court at the time the order of disbarrment was entered.

The petition for certiorari should be granted in order that this court review the decision of the Court of Appeals of Georgia in this case.

Respectfully submitted,

OLIVER C. HANCOCK,

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Of Counsel for Petitioner.